IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 935/2005
(Bheru Singh Vs. Pukhraj & Another)

Date of Order : 15/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.S.Singh for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Surendra Surana for the non-petitioner.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 19.3.2005 passed by Additional Sessions Judge No.3, Jodhpur (for short 'the revisional court' hereinafter) in Criminal Revision No. 48/2004, whereby the revision petition filed by the petitioner against the order dated 13.7.2004 passed by Chief Judicial Magistrate, Jodhpur (for short 'the trial court' hereinafter) was dismissed.

I have heard learned counsel for the petitioner, public prosecutor and counsel appearing for the non-petitioner.

Carefully gone through the order dated 13.7.2004 as well as the order of the revisional court dated 19.3.2005.

On 13.7.2004, the petitioner filed an application under Section 216 Cr.P.C. seeking to amend the charge and to take cognizance against the non-petitioner No.1 for the offence under Section 307 IPC and commit the case to the Court of Sessions. That application came to be dismissed by the trial court on the ground that after investigation the police filed challan for the offence under Section 307 apart from other offences. The matter was committed to the Court of Sessions and at the stage of framing of charge, the learned Sessions Judge discharged the non-petitioner of the offence under Section 307 IPC as the charge for the offence punishable under Section 307 IPC was not made out and in exercise of the power under Section 228 Cr.P.C. sent the matter to the Chief Judicial Magistrate and therefore, the order discharging non-petitioner No.1 Pukhraj passed by learned Sessions Judge, has attained finality. During course of arguments, learned counsel for the non-petitioner No.1 has filed statement of PW-4 Ram Gopal who is injured in the instant case. PW-4 Ram Gopal has not supported the prosecution case and has been declared hostile. Except Ram Gopal, there is no other injured. The petitioner complainant is not the injured person. When the injured himself has not

supported the prosecution case, there arise no question of amending the charge.

The petition has no force and it is, therefore, dismissed.

(H.R.PANWAR),J.

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